



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUN 5 1996]

REPLY TO THE ATTENTION OF: C-29A

VIA FAX

Edward C. Fitzhenry, Jr.
Lueders, Robertson and Kozen
P.O. Box 735
1939 Delmar Ave.
Granite City, IL 60240

EPA Region 5 Records Ctr.



257960

Re: U.S. v. NL Industries, Inc. et al. Granite City
Civ. Action No. 91-578-JLF

Dear Mr. Fitzhenry:

The United States Environmental Protection Agency (U.S. EPA) was recently forwarded your request to include the April 1996, Bornschein study in the Administrative record. As you correctly note in your May 8, 1996 letter to Mr. Gelman and Mr. Grady of the United States Department of Justice, any item that is to be included in the administrative record after the decision document has been signed must meet the requirements set forth in 40 C.F.R. § 40 C.F.R. 300.825.

U.S. EPA is required to consider such comments submitted after the close of the public comment period only to the extent that the comments "contain significant information not contained elsewhere in the administrative record file which could not have been submitted during the public comment period and which substantially support the need to significantly alter the response action." It is quite clear that the Bornschein report was not previously available as it is dated April 1996. However, the Bornschein report is simply a summary of data collected for the purpose of making these findings. U.S. EPA has repeatedly asked the City of Granite City for all data collected by or on behalf of Granite City with respect to this report. Such data could have and should have been provided during the public comment period, thereby allowing U.S. EPA to evaluate its importance to the remedial action.

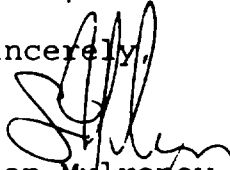
Before U.S. EPA can consider the inclusion of the Bornschein report, U.S. EPA requires a showing by Granite City that this information and all data collected in conjunction with the report, could not have been submitted during the public comment period and that this report and data substantially support the need to significantly alter the response action. U.S. EPA requires all data in both hard copy and on disk so it can be evaluated in the context of the Bornschein report.

U.S. EPA looks forward to hearing from you and should Granite City provide a showing that this report meets the

requirements set forth in 40 C.F.R. 300.825(c) and provides all the data as previously requested, U.S. EPA can then include these items in the administrative record.

If you have any questions, feel free to call.

Sincerely,



Sean Mulroney
Assistant Regional Counsel

cc: ✓ Brad Bradley, EPA
Sherri Bianchin, EPA
Lee Gelman, DOJ
John H. Grady, DOJ